

THE PROTECT OUR HEALTH PRIVACY ACT of 2012

Senator Franken

Recent violations of the privacy of Americans' protected health information, including detailed medical histories, medical diagnoses, and health care services, have been widely reported by the news, by the Department of Health and Human Services, by the Department of Justice, and by the Minnesota Attorney General. Our federal laws designed to protect the privacy of Americans' health information are not doing enough.

The Protect Our Health Privacy Act will update federal health privacy laws to fully protect patients and consumers and keep companies from unnecessarily sharing or selling patients' protected health information.

To keep patients' information safe, the Protect Our Health Privacy Act will:

- **Require health providers to encrypt portable devices that store health information.** Current law requires that health providers, insurers, and clearinghouses ("covered entities") report violations of protected health information, but only if the breached data were not encrypted. This safe harbor was intended to create an incentive to encrypt protected health information. However, breaches of unencrypted data still occur, especially when the data are maintained on portable devices, like laptops and thumb drives. The bill would require all covered entities to encrypt portable devices that store protected health information.
- **Restrict Business Associates' use of protected health information.** Current law requires covered entities to use business associate agreements to restrict their contractors' (known as "business associates") use of protected health information. This bill clarifies that business associate agreements should also include a provision limiting business associates' use of protected health information to those activities for which the business associate was expressly contracted. For example, this language would clarify that a business associate that receives protected health information from a covered entity to perform one function cannot then use the same protected health information to perform a different function for which the business associate has not been engaged by the covered entity.
- **Improve Congressional oversight.** Under current law, the Department of Health and Human Services (HHS) is required to report to Congress on its HIPAA enforcement activities. However, during a November 9, 2011, hearing before the Senate Judiciary Subcommittee on Privacy, Technology, and the Law, representatives from HHS and the Department of Justice (DOJ) acknowledged that those reports exclude some important information that Congress needs to perform its oversight functions. This bill requires the agencies to report additional information to Congress about to the information they receive regarding privacy breaches and their enforcement activities.
- **Ensure patient safety.** In November, the Institute of Medicine released a report recommending that the Department of Health and Human Services collect information from vendors and consumers of health information technology (HIT) about any adverse health events that occur as a result of the use of HIT. This bill would require the Secretary of HHS to adopt this recommendation and to report to Congress on the safety of HIT.

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Endorsing Organizations:

Center for Democracy and Technology

National Partnership for Women and Families

National Consumer Law Center

Consumer Action

NAACP

National Association of Consumer Advocates